



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of:           Creativision, Inc.  
File:                 B-225829  
Date:                 July 24, 1987

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### DIGEST

1. Agency's cost realism analysis reasonably adjusted upward protester's proposed costs for a cost-reimbursement contract to develop an instructional system where the protester based reduction of manhours on the use of a computer program that has not been previously used for that purpose and has not yet been fully developed.
2. Agency conducted meaningful discussions with protester where it sent a list of questions to the protester pointing out the principal weaknesses in its proposal and afforded it the opportunity to submit a best and final offer.
3. Where proposal to provide services set aside for small business contains information indicating that the offeror is using a large business subcontractor to such an extent that the large business might be considered to have a controlling role, the contracting officer should refer the offeror's size status to the Small Business Administration for its determination.

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### DECISION

Creativision, Inc. protests the award of a contract to Simtec, Inc. under request for proposals No. N61339-86-R-0024 issued by the Naval Training Systems Center, Orlando, Florida. The RFP was set aside for small business concerns only and contemplated the award of a cost-plus-fixed-fee contract to develop an instructional system for replacement pilots in CH-53D and CH-53E helicopters. Creativision argues that since its proposed overall cost was 23 percent lower than Simtec's and its proposal was determined to be technically acceptable, it should have received the award.

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The protester also challenges certain aspects of the agency's technical evaluation; contends that the agency failed to conduct adequate discussions; and argues that the award violated the small business set-aside provisions of the RFP.

We deny the protest.

The RFP contained several technical evaluation factors and their relative weights. It advised offerors that the award would be based on the "greatest value" to the government in terms of technical merit and cost rather than on the basis of the lowest evaluated cost, and reserved to the agency the right to determine which superior technical proposals, if any, merited consideration for award at other than the lowest cost. The RFP further advised offerors that proposed costs would be evaluated for realism and that the evaluation could include all necessary and verifiable items of cost.

The agency used an evaluation plan that assigned technical merit twice the importance of cost, and under which the proposal with the lowest evaluated cost received the maximum points available for cost while the other proposals received proportionally lower scores. The Navy received six proposals and after initial evaluation determined four to be in the competitive range. The evaluation results regarding the proposals of the awardee and the protester were as follows:

Offeror	Technical Score	Proposed Cost	Evaluated Cost	Cost Score
Simtec	184.2	1,521,557	1,094,227	100
Creati-vision	155.4	626,392	1,120,250	97.68

Thus, Simtec's proposal obtained the highest overall ranking (284.2) while Creativision was third (253.08), just 3 points behind the second highest-ranked proposal (256.33).

After discussions during which the protester was advised that it had significantly underestimated the total hours necessary for performance, the offerors were requested to submit best and final offers, with the following results:

Simtec	185.2	1,178,688	1,098,419	100
Creati-vision	159.4	910,943	1,193,590	92.03

Simtec retained the highest overall ranking (285.2) while Creativision remained third (251.43), fewer than 5 points

behind the second-ranked proposal. In the final cost evaluation, the Navy determined that, notwithstanding an increase in proposed manpower, Creativision's proposal underestimated the necessary labor hours and thus, for evaluation purposes, adjusted Creativision's proposed costs upward. The evaluators found Simtec's proposal overestimated the necessary labor and adjusted its proposed costs downward.

The short answer to the protester's contention that it should have received the award based on its less costly technically acceptable proposal is that since the RFP's evaluation scheme stated that superior technical merit could warrant award at other than the lowest cost, there was no requirement that award be based on the lowest cost. See, e.g., Comarco, Inc., B-225504, et al., Mar. 18, 1987, 87-1 CPD ¶ 305. Creativision does complain, and we must agree, that the Navy's evaluation improperly was based on an undisclosed weighing of technical merit as being twice as important as cost. See 10 U.S.C. § 2305(a)(2) (Supp. III 1985) (statutory requirement that solicitations contain a statement of the significant evaluation factors and the relative importance assigned to those factors including price or cost). This technical defect did not affect the award decision, however, since Creativision's proposal was evaluated, after the cost realism analysis, as being both more costly and technically inferior to Simtec's proposal.

The protester objects to the cost realism analysis and to certain aspects of the Navy's technical evaluation. The protester contends that its proposed utilization of a government-owned computer program, CADSAT, would permit a significant reduction in the number of staffhours otherwise required to perform the contract. (The program was produced by a government contractor to aid in the development of a training program for F-14 aircrews.) The Navy disagreed with Creativision's reduced labor assessment because, according to the Navy, the CADSAT program has never been used for a project of this scope; further, the program has not been fully developed and contains flaws. The Navy therefore adjusted the costs of Creativision's proposal upward by applying its greater labor estimate to Creativision's proposed cost structure.<sup>1/</sup> In our view, the agency's determination was reasonable; although Creativision disagrees with the determination, it clearly was based on a

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<sup>1/</sup> The protester argues that if the CADSAT program were flawed, the government would not have purchased it. This is not necessarily so, however, since the government often purchases software that has potentially useful applications but has not yet been perfected.

careful analysis of the firm's proposal. Quadrex HPS, Inc., B-223943, Nov. 10, 1986, 86-2 CPD ¶ 545. The agency's adjustment of Creativision's proposed cost in the cost analysis was, in our view, reasonable. See G.P. Taurio, Inc., B-222564, July 22, 1986, 86-2 CPD ¶ 90.

Creativision also contends that the technical evaluators improperly downgraded its proposal in several areas-- principally for failing to explain the proposed media and number of lessons required to perform the contract, and also for alleged inadequate experience of Creativision's proposed intermediate instructional developer.

The evaluation of the technical merit of proposals is primarily a matter of the contracting agency's discretion which we will not disturb unless shown to be unreasonable or in violation of procurement laws or regulations. NDI Engineering Co., Inc., B-224769, Jan. 8, 1987, 66 Comp. Gen. \_\_\_, 87-1 CPD ¶ 37.

Our review of the record indicates that the evaluation was reasonable and in accordance with the stated evaluation criteria. Regarding the selection of media and the number of lessons, the protester's proposal contains only broad statements that the selection was based on its knowledge and experience gained from similar projects; the RFP required a detailed discussion of the methodology and a demonstration of the offeror's understanding of the project. Similarly, the resume Creativision submitted for its proposed intermediate instructional developer failed to state experience with aviation training and similar helicopter training services, which the RFP specifically listed as a factor for evaluating personnel. In our view, the Navy fairly and reasonably evaluated the relative technical merits of the protester's proposal.

Concerning the adequacy of discussions, the protester basically argues that the Navy never specified the deficiencies subsequently cited as a basis for rejecting its proposal in favor of Simtec's.

While discussions must be meaningful, the content and extent of competitive negotiations is a matter of judgment to be exercised by the contracting officer based on the particular facts of the case at hand. Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.610(b) (1986). The contracting officer should advise an offeror of deficiencies in its proposal so that they may be corrected, but should not engage in technical leveling--that is, helping an offeror to bring its proposal up to the level of the other proposals through successive rounds of discussions, such as by pointing out weaknesses resulting from the offeror's lack of

diligence, competence, or inventiveness in preparing the proposal. FAR, 48 C.F.R. § 15.610(d); Jones & Co., B-224914, Feb. 24, 1987, 66 Comp. Gen. \_\_\_, 87-1 CPD ¶ 201.

The Navy raised several questions with Creativision specifically expressing concerns about the proposed labor hours and its experience. Further, one question specifically requested the protester to explain how it had determined the proposed media and number of lessons. We believe these questions reasonably should have led Creativision into the areas of its proposal that the agency considered weakest. Since Creativision also had an opportunity to improve its proposal in its best and final offer, the discussions were meaningful. The protester apparently faults the contracting officer for not engaging in successive rounds of discussions and continuing to point out specific weaknesses in its proposal; such action, however, would amount to prohibited technical leveling. See Miller Printing Equipment Corp., B-225447.2, Mar. 24, 1987, 87-1 CPD ¶ 337.

Finally, Creativision alleges that the award to Simtec violated the small business set-aside because Simtec proposed to have a large business perform a significant portion of the contract. An offeror's eligibility for a small business set-aside involves a matter of its size status, which our Office generally will not review. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(2) (1986); Nortex Corp., B-224930, Jan. 6, 1987, 87-1 CPD ¶ 12. The Small Business Administration (SBA) has conclusive statutory authority to determine whether a firm is a small business for federal procurements. 15 U.S.C. § 637(b)(6) (1982); Nortex Corp., *supra*. On the other hand, our Office will consider whether an offeror's self-certification that it is a small business should have been, and thus now should be, challenged by the contracting officer for the purpose of a particular procurement. Robertson and Penn, Inc., d/b/a National Services Co., B-220283.2, Sept. 25, 1986, 65 Comp. Gen. \_\_\_, 86-2 CPD ¶ 350. In this respect, although a contracting officer generally may accept at face value an offeror's self-certification, the contracting officer should refer the matter to SBA if he has information prior to award that reasonably impeaches the certification. *Id.*

The SBA's regulations do not prohibit a small business from proposing to subcontract with a large business to perform portions of a services contract set aside for small business concerns. Robertson and Penn Inc., *supra*. The SBA's regulations do specifically provide, however, that a small business may be considered a joint venturer affiliate of an ostensible subcontractor proposed to perform primary or vital requirements of the contract to such an extent that it

may be considered to have a controlling role. 13 C.F.R. § 121.3(a)(A) and (C) (1987); see also Pacific Information Management, Inc., B-224506, Aug. 14, 1986, 86-2 CPD ¶ 186. This is important because the applicable size standard for a set-aside applies to the offeror and its affiliates. 13 C.F.R. § 121.5(a).

Simtec's proposal states that its proposed subcontractor, the Allen Corporation, is a division of The Singer Training Systems Group, which is a subsidiary of The Singer Company-- a well-known large business defense contractor.<sup>2/</sup> Simtec's proposal indicates that its subcontractor will perform the technical development and production activities while Simtec will provide the management and quality oversight, and that the subcontractor's proposed effort accounts for approximately three quarters of Simtec's overall proposed cost, and a greater proportion of its evaluated cost. Further, Simtec's proposal indicates that Simtec and its subcontractor might have prepared and submitted the proposal as a "team" effort.

We believe these pieces of information raise substantial doubts about Simtec's self-certification that it was a small business for the purpose of this procurement. The contracting officer thus should have referred the matter to the SBA for its conclusive determination, and we recommend that he do so now. See Foam-Flex Inc., 62 Comp. Gen. 300 (1983), 83-1 CPD ¶ 383.

The protest is denied, with the recommendation that the Navy refer Simtec's size status to the SBA.

*Harry R. Van Cleve*

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General Counsel

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<sup>2/</sup> The Directory of Corporate Affiliates 1987, National Register Publishing Co., lists the subcontractor as a division of The Singer Co. and states that The Singer Co. has 46,000 employees.